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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,164	10/29/2001	Wade W. Smith	WMS-15	9573
7590 Spencer T. Smith 53 Silver Brook Lane North Granby, CT 06060				
EXAMINER				
BORISSOV, IGOR N				
ART UNIT		PAPER NUMBER		
3628				
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06/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: Wade W. Smith

Appeal No. 2008-1554
Application No. 10/055,164
Technology Center 3600

Mailed: June 2, 2009

Before DALE SHAW, *Chief Appeals Administrator*
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on January 23, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, STATUS OF CLAIMS

A review of the file finds that the status of the claims as provided in the Appeal Brief filed June 12, 2006, under the heading “Status of Claims” is unclear and/or is not consistent with the status of claims of record in accordance with 37 CFR 41.37(c)(1)(iii). The status of the claims as provided in the Appeal Brief must be consistent with the last **entered** amendment. Each claim on appeal must be identified. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for details.

A review of the last entered amendment finds that claims 3 is rejected; whereas Appellant has either not indicated the status of this claim. Correction of the status of all claims is required.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT

MATTER

Appellant filed an Appeal Brief dated June 12, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. < While reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 7-8 of the Appeal Brief filed June 12, 2006, is deficient because it does not separately map independent claims 1 and 4 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that this application be returned to the Examiner to:

- 1) to hold the Appeal Brief filed on June 12, 2006 defective;
- 2) notify Appellant to file a paper properly addressing the status of all claims;
- 3) notify the Appellant to submit a paper, which addresses the status of all claims and also corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 4) to acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Appeal No. 2008-1554
Application No. 10/055,164

DS/jsd

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